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# Pennsylvania's College and University Security Information Act: The Effect of Campus Security Legislation on University Liability for Campus Crime

*When Howard and Connie Clery sent their 19-year-old daughter, Jeanne, off to Lehigh University, they thought they were sending her to a safe, idyllic campus. She didn't survive her freshman year.<sup>1</sup>*

## I. Introduction

In Spring of 1986, Jeanne Ann Clery, a nineteen year old freshman at Lehigh University in Pennsylvania, was sexually assaulted and murdered in her dormitory room during a robbery attempt.<sup>2</sup> Jeanne's throat was slashed and she was raped, sodomized, beaten, and bitten before dying of strangulation.<sup>3</sup> A fellow student was convicted of the brutal killing and sentenced to die in the electric chair.<sup>4</sup>

This tragic incident is not an isolated one. In recent years, numerous colleges have reported murders,<sup>5</sup> and the incidence of violent crime, in general, has dramatically increased on university campuses across the country.<sup>6</sup>

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1. Kalette, *Are Colleges Failing to Curb Crime?*, USA Today, Jan. 13, 1988, at A1, col. 3.

2. Collins, *Campuses to Report Crime Rates*, Philadelphia Inquirer, July 31, 1988, at B1, col. 6.

3. Wenner, *Daughter's Murder Sparks Crusade*, The Morning Call, Sept. 6, 1987, at B1, col. 3; *id.* at B3, col. 1.

4. Mortimer, *Murderer Sentenced to Electric Chair*, Main Line Times, July 28, 1988, at 12, col. 2. See also O'Reilly, *Grieving Parents With a Cause*, Philadelphia Inquirer, July 5, 1987, at H6, col. 5.

5. Institutions that have reported murders in the past five years include Cheney University, Clarkson University, Cornell University, Drexel University, Pennsylvania State University, University of Pennsylvania, University of Rochester, University of Scranton, and Western Michigan University. See generally Fisher, *Preaching the Gospel of Safety*, LEHIGH ALUMNI BULL., REUNION 1988, at 21, 21; Purdam, *The Reality of Crime on Campus*, N.Y. Times, Apr. 10, 1988, (Education), at 49; O'Reilly, *supra* note 4, at H6, col. 1; Kalette, *supra* note 1, at A2, col. 2; H. Clery, Remarks to Proposed Legislation Requiring Colleges and Universities to Supply Crime and Security Information to Prospective Students (Oct. 27, 1987) [hereinafter Clery] (copy on file in the Dickinson Law Review office).

6. Kalette, *supra* note 1, at A2, col. 3. See Regional Campus Violence Survey: 1985, 1986, 1987 General Reports, Towson State University Center for the Study and Prevention of Campus Violence [hereinafter General Reports] (copy on file in the Dickinson Law Review office) (During the 1984-85 academic year the average campus experienced, for example, 1.3 sexual assaults (excluding rape), 1.1 rapes, and 7.0 physical assaults, 5.6% of which involved

Crime reporting procedures vary from college to college. Therefore, it is impossible to discern whether there is a higher incidence of crime on campus than in the surrounding community.<sup>7</sup> Publicity regarding violent campus crimes<sup>8</sup> and the increasing number of negligence suits brought against colleges accused of inadequate security have brought the issue of student safety to the forefront.<sup>9</sup> According to the Uniform Crime Reports for 1984-85,<sup>10</sup> higher education institutions reported between 2,000 and 2,500 crimes of personal violence<sup>11</sup> and over 100,000 serious property crimes<sup>12</sup> each year. Concern about campus safety heightens upon the realization that these figures are considerably understated.<sup>13</sup>

The Uniform Crime Reports figures underestimate the incidence of violent crimes on campuses for several reasons. First, only fifteen percent of the colleges and universities in the United States report crime statistics to the Federal Bureau of Investigation.<sup>14</sup> Additionally, two to ten times as many crimes go unreported to police, depending on the particular crime and the locality.<sup>15</sup> Also, due to the closed environment of the college campus, the victim and the offender might move in the same social circles.<sup>16</sup> As a result, victims may be more reluctant to report on-campus incidents than to expose crimes in the surrounding community.<sup>17</sup> Finally, since college administrators want to avoid attracting negative publicity to their schools, they tend to conceal campus crime.<sup>18</sup> Responses from an April 1987 poll of colleges and universities, for instance, indicate that less than

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the use of deadly weapons. Two years later, in the 1986-87 academic year, the average campus experienced 2.2 sexual assaults (excluding rape), 2.1 rapes, and 8.6 physical assaults, 11% of which involved the use of deadly weapons.)

7. Collins, *supra* note 2, at B1, col. 6. See also Purdam, *supra* note 5, at 48 ("Significant numbers of schools don't report and the criteria are interpreted differently by different schools.").

8. Fisher, *supra* note 5, at 21.

9. Purdam, *supra* note 5, at 47.

10. *Uniform Crime Reports* for 1984 and 1985 (Washington: United States Government Printing Office), cited in M.C. SMITH, *COPING WITH CRIME ON CAMPUS* 29 n.7 (1988).

11. The *Uniform Crime Reports* define personal violence crimes as murder, manslaughter, forcible rape, forcible robbery, and aggravated assault. M.C. SMITH, *supra* note 10, at 17.

12. The *Uniform Crime Reports* define serious property crimes as burglary, larceny, motor vehicle theft, and arson. M.C. SMITH, *supra* note 10, at 17.

13. *Id.*

14. Purdam, *supra* note 5, at 47. Of the 2,100 four-year colleges and universities in the United States, approximately 300 (15%) report data individually through the Federal Bureau of Investigation's voluntary Uniform Crime Reports system. *Id.* Some estimate that as few as 10% of the nation's colleges and universities report crimes to the Federal Bureau of Investigation. Kalette, *supra* note 1, at A2, col. 1.

15. M.C. SMITH, *supra* note 10, at 17.

16. Purdam, *supra* note 5, at 48.

17. *Id.*

18. M.C. SMITH, *supra* note 10, at 17.

one-third of all on-campus sexual assaults and less than one-half of all on-campus physical assaults are reported to campus police.<sup>19</sup> Due to the fear of adverse publicity, institutions report even fewer crimes to the Federal Bureau of Investigation.<sup>20</sup>

In the past, college campuses were viewed as "safe, bucolic havens, academic groves where the pursuit of knowledge and the cultivation of fellowship shut out many of the threats and fears of everyday life."<sup>21</sup> The growing awareness of the high incidence of campus violence, however, coupled with the resulting movement to compel colleges and universities to take action to protect their students from on-campus criminal activity,<sup>22</sup> is shattering this collegiate ideal.

This Comment examines the problem of campus crime and Pennsylvania's legislative response, the College and University Security Information Act.<sup>23</sup> Next, it traces the history of college and university tort liability for crime occurring on-campus. In addition, this Comment analyzes the effect of the College and University Security Information Act, and similar legislation pending in twenty-one other states,<sup>24</sup> on future college and university tort liability for failure to take protective measures. Finally, this Comment critiques the Pennsylvania legislation, which legislatures should consider when drafting similar statutes in other states.

## II. The College and University Security Information Act

Prior to March 1988, the only Pennsylvania law relating to campus security addressed the responsibilities and powers of campus security officers.<sup>25</sup> Pennsylvania's colleges and universities did not have to report crime statistics or the amount of police protection provided on their campuses.<sup>26</sup>

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19. General Reports, *supra* note 6. A 1987 nationwide poll of colleges and universities indicates that only 31% of all on-campus sexual assaults and 49% of all on-campus physical assaults are reported to campus police. *Id.*

20. See M.C. SMITH, *supra* note 10, at 17; Purdam, *supra* note 5, at 47.

21. Purdam, *supra* note 5, at 47. See also Fisher, *supra* note 5, at 21 ("Many people imagine that the academic world is somehow sheltered from the fears and annoyances of the real world. Yet the gates outside the ivory towers have traditionally remained unlocked, allowing . . . crime to filter onto campuses.").

22. Purdam, *supra* note 5, at 47. See also Fisher, *supra* note 5, at 21 ("[R]ecent publicity afforded violent crimes on a number of campuses has brought the issue [of the safety of young adults on college campuses] into sharp focus.").

23. 24 PA. CONS. STAT. ANN. § 2502 (Purdon Supp. 1989).

24. Collins, *supra* note 2, at B4, col. 2.

25. HOUSE REPUBLICAN CAUCUS, LEGAL BILL ANALYSIS, H.R. 1900, 172nd Cong., 1988 Sess., Mar. 29, 1988 [hereinafter LEGAL BILL ANALYSIS].

26. *Id.*

Howard and Connie Clery, whose daughter was killed in her dormitory room at Lehigh University in 1986, urged the introduction of legislation in the Pennsylvania legislature<sup>27</sup> after discovering that security at Lehigh did not correspond with the increasing crime rate.<sup>28</sup> The College and University Security Information Act is Pennsylvania's response to the increase in violent campus crime. The Act amended existing law by requiring all higher education institutions to compile and report campus crime and security information.<sup>29</sup>

The College and University Security Information Act defines higher education institutions that are affected by the Act.<sup>30</sup> Public and private universities, including branch campuses, junior colleges, and community colleges, must comply with the Act.<sup>31</sup> Business and trade schools, however, are excluded.<sup>32</sup> The Act contains four operative sections.<sup>33</sup>

The first section of the College and University Security Information Act, section 3(a),<sup>34</sup> requires that each higher education institution annually report crime statistics to the Pennsylvania State Police for use in the Pennsylvania Uniform Crime Report.<sup>35</sup> The figures must be reported on the forms and in the format required by the State Police.<sup>36</sup>

To comply with the Act's second operative section, section 3(b),<sup>37</sup> each institution must publish, and provide upon request to

27. E.g., Rep. R.A. McClatchy, Jr., Memo on Proposed Legislation to All House Members (Sept. 29, 1987) [hereinafter McClatchy] (copy on file in the Dickinson Law Review office); see also K. Vranicar, Notes From Presentation Given Before Bill Enacted 1 (Apr. 1988) [hereinafter Vranicar] (copy on file in the Dickinson Law Review office).

28. Clery, *supra* note 5, at 1.

29. LEGAL BILL ANALYSIS, *supra* note 25.

30. 24 PA. CONS. STAT. ANN. § 2502-2 (Purdon Supp. 1989).

31. *Id.*

32. Vranicar, *supra* note 27, at 2.

33. 24 PA. CONS. STAT. ANN. § 2502 (Purdon Supp. 1989). See also Letter from Rosalyn K. Robinson, Deputy General Counsel, to Sister M. Lawreace Antoun, Interim Chairperson, State Board of Education 1 (July 12, 1988) [hereinafter Deputy General Counsel Letter] (copy on file in the Dickinson Law Review office) (opinions of Counsel as to whether regulations are necessary to implement the College and University Security Information Act).

34. Section 3 of the Act, entitled Crime Statistics and Security Policies and Procedures, provides in pertinent part:

(a) Crime Statistics Reports.—Each institution of higher education shall report to the Pennsylvania State Police, on an annual basis, crime statistics for publication in Crime in Pennsylvania (Uniform Crime Report) on forms and in the format required by the Pennsylvania State Police.

24 PA. CONS. STAT. ANN. § 2502-3 (Purdon Supp. 1989).

35. *Id.*

36. 24 PA. CONS. STAT. ANN. § 2502-3(a) (Purdon Supp. 1989).

37. Section 3(b) of the Act provides:

(b) Publishing and Distributing Reports.—Each institution of higher education shall publish and distribute a report which shall be updated annually and

applicants and new employees, a report containing individual on-campus crime statistics for the most recent three-year period.<sup>38</sup> Moreover, when acknowledging receipt of an admission application, the institution must inform the applicant that such information is available.<sup>39</sup> Current students and employees must receive an updated report on campus crime statistics each year.<sup>40</sup>

Under section 3(c),<sup>41</sup> the third section of the College and Uni-

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which shall include the crime statistics as reported under subsection (a) for the most recent three-year period. Crime rates shall also be included in the report. The crime rates reported shall be based on the numbers and categories of crimes reported under subsection (a) and the number of full-time equivalent undergraduate and graduate students . . . and full-time employees at the institution of higher education. Upon request, the institution shall provide the report to every person who submits an application for admission to either a main or branch campus and to each new employee at the time of employment. In its acknowledgment of receipt of the formal application of admission, the institution shall notify the applicant of the availability of such information. The information shall also be provided on an annual basis to all students and employees. Institutions with more than one campus shall provide the required information on a campus-by-campus basis.

24 PA. CONS. STAT. ANN. § 2502-3(b) (Purdon Supp. 1989).

38. *Id.* See also Deputy General Counsel Letter, *supra* note 33, at 2; Vranicar, *supra* note 27, at 2.

39. 24 PA. CONS. STAT. ANN. § 2502-3(b) (Purdon Supp. 1989). See also Deputy General Counsel Letter, *supra* note 33, at 2; Vranicar, *supra* note 27, at 2.

40. 24 PA. CONS. STAT. ANN. § 2502-3(b) (Purdon Supp. 1989). See also Deputy General Counsel Letter, *supra* note 33, at 2; Vranicar, *supra* note 27, at 2.

41. Section 3(c) of the Act provides:

(c) Security Policies and Procedures.—Each institution of higher education shall provide to every person who submits an application for admission to a main or branch campus, to every new employee at the time of employment, and annually to all students and employees [information] regarding the institution's security policies and procedures. Institutions with a main campus and one or more branch campuses shall provide the information on a campus-by-campus basis. Such information for the most recent school year shall include, but not be limited to, the following:

- (1) The number of undergraduate and graduate students enrolled.
- (2) The number of undergraduate and graduate students living in student housing.
- (3) The total number of nonstudent employees working on the campus.
- (4) The administrative office responsible for security on the campus.
- (5) A description of the type and number of security personnel utilized by the institution, including a description of their training.
- (6) The enforcement authority of security personnel, including their working relationship with state and local police agencies.
- (7) Policy on reporting criminal incidents to state and local police.
- (8) Policy regarding access to institutional facilities and programs by students, employees, guests and other individuals.
- (9) Procedures and facilities for students and others to report criminal actions or other emergencies occurring on campus and policies concerning the institution's response to such reports.
- (10) A statement of policy regarding the possession, use and sale of alcoholic beverages.
- (11) A statement of policy regarding the possession, use and sale of

versity Security Information Act, the institution's policies and procedures regarding campus security must be disclosed in the same way as required under section 3(b). Section 3(c) details the information that must be provided, including information on the institution's students, employees, and security personnel.<sup>42</sup> This data must be made available to applicants and current students.<sup>43</sup> In addition, the institution's employees must receive an updated report each year.<sup>44</sup>

The final operative section of the Act, section 3(d),<sup>45</sup> applies to institutions that maintain student housing facilities. Section 3(d) requires the disclosure of additional information, including the types of student housing available and policies regarding residence hall security.<sup>46</sup>

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illegal drugs.

(12) A statement of policy regarding the possession and use of weapons by security personnel and any other person.

(13) Any policy regarding students or employees with criminal records.

(14) Security considerations used in the maintenance of campus facilities, including landscaping, grounds-keeping [and] outdoor lighting.

(15) A description of the communication mediums [to] inform the campus community about security matters as well as the frequency with which the information is usually provided.

24 PA. CONS. STAT. ANN. § 2502-3(c) (Purdon Supp. 1989).

42. *Id.*

43. *Id.*

44. *Id.* See also Deputy General Counsel Letter, *supra* note 33, at 2; Vranicar, *supra* note 27, at 2.

45. Section 3(d) of the Act provides:

(d) Information [on] Security Policies.—Institutions which maintain student housing facilities shall include in the information required by subsection (c) the following:

(1) Types of student housing available (on-campus, off-campus; single room, double, group; single sex, coed; undergraduate, graduate, married; etc.).

(2) Policies on housing assignments and requests by students for assignment changes.

(3) Policies concerning the identification and admission of visitors in student housing facilities.

(4) Measures to secure entrances to student housing facilities.

(5) Standard security features used to secure doors and windows in students' rooms.

(6) A description of the type and number of employees, including security personnel, assigned to the student housing facilities which shall include a description of their security training.

(7) The type and frequency of programs designed to inform student housing residents about housing security and enforcement procedures.

(8) Policy and any special security procedures for housing students during low-occupancy periods such as holiday and vacation periods.

(9) Policy on the housing of guests and others not assigned to the student housing or not regularly associated with the institution of higher education.

24 PA. CONS. STAT. ANN. § 2502-3(d) (Purdon Supp. 1989).

46. *Id.* See also Deputy General Counsel Letter, *supra* note 33, at 2.

Section 5 of the College and University Security Information Act governs enforcement of the Act.<sup>47</sup> Pursuant to section 5, the Commonwealth may bring action against an institution to compel compliance with the Act whenever the Attorney General has reason to believe that the institution is violating the Act.<sup>48</sup> Additionally, the Attorney General may recover a civil penalty not in excess of \$10,000.00 if an institution willfully violates the Act or fails to comply promptly with a court order directing compliance with the Act.<sup>49</sup>

The College and University Security Information Act was approved by the Pennsylvania legislature in May 1988 and took effect in November 1988.<sup>50</sup> As a result, Pennsylvania institutions of higher education must distribute information required by sections 3(b) and 3(c) by November 26, 1989 and distribute updates within one year of the initial distribution.<sup>51</sup> In addition, 1988 crime figures must be reported to the Pennsylvania State Police in January 1989, as required by section 3(a).<sup>52</sup> This law is not a panacea for campus crime; however, it is expected to increase and improve on-campus procedures aimed at preventing violent crimes.<sup>53</sup>

### III. The History of College Liability

#### A. *The In Loco Parentis Doctrine as a Basis for College Liability*

In the 19th century, college administrators assumed a parental role over students,<sup>54</sup> and courts refused to interfere with the author-

47. Guidelines for enforcement are established in section 5 of the Act, which provides:

(a) Action to compel compliance.—Whenever the Attorney General has reason to believe that an institution of higher education is violating this act, the Attorney General may bring an action in the name of the Commonwealth against the institution to compel compliance.

(b) Civil Penalty.—In any action brought by the Attorney General to compel compliance with this act, if the court finds that an institution of higher education is willfully violating this act or if any institution of higher education fails to promptly comply with an order of the court to comply with this act, the Attorney General, acting in the name of the Commonwealth, may recover on behalf of the Commonwealth a civil penalty not to exceed \$10,000.

24 PA. CONS. STAT. ANN. § 2502-5 (Purdon Supp. 1989).

48. *Id.* See also Vranicar, *supra* note 27, at 2.

49. 24 PA. CONS. STAT. ANN. § 2502-5 (Purdon Supp. 1989). See also Vranicar, *supra* note 27, at 2.

50. Deputy General Counsel Letter, *supra* note 33, at 2. Section 4 of the Act, which authorizes the State Board of Education to promulgate rules and regulations necessary to carry out the Act, was to take immediate effect; however, it was determined that regulations were not necessary for full implementation of the Act. *Id.* ("The Act on its face is clear and its intended purpose can be carried out without [further] regulation.")

51. Deputy General Counsel Letter, *supra* note 33, at 3.

52. *Id.*

53. Vranicar, *supra* note 27, at 2.

54. Szablewicz & Gibbs, *Colleges Increasing Exposure to Liability: The New In Loco*



ity of college administrations to regulate student activities.<sup>55</sup> In the 1866 case of *People v. Wheaton College*,<sup>56</sup> in which the court upheld an institution's prohibition of student membership in secret societies, the doctrine of *in loco parentis* emerged.<sup>57</sup> Under *in loco parentis*, education authorities acted in place of students' parents, allegedly in the students' best interests.<sup>58</sup> Thus, in addition to academic responsibilities, college authorities were bound to protect the safety, morals, and welfare of students.<sup>59</sup>

In support of the extensive authority granted to education authorities under *in loco parentis*, the 19th century judiciary upheld institutional rules and policies that exceeded academic regulation.<sup>60</sup> In *Gott v. Berea College*,<sup>61</sup> the Kentucky Supreme Court upheld a college regulation that prohibited students from patronizing local restaurants and saloons.<sup>62</sup> The court held that college authorities may "make any rule or regulation for the government or betterment of their pupils that a parent could make for the same purpose."<sup>63</sup>

Almost thirty years later, the Tenth Circuit Court of Appeals solidified *in loco parentis* in *Brigham Young University v. Lillywhite*.<sup>64</sup> The court found the university liable for injuries sustained by a student in an unsupervised classroom.<sup>65</sup> As *Lillywhite* illustrates, the doctrine of *in loco parentis* gave colleges the responsibility for students' physical safety as well as moral well-being.<sup>66</sup> Legal recognition that colleges should stand *in loco parentis* concerning the welfare of their students prevailed until recently.<sup>67</sup>

*Parentis*, 16 J.L. & EDUC. 453, 454 (1987).

55. *Id.* at 454.

56. 40 Ill. 186 (1866).

57. *Id.* See Szablewicz & Gibbs, *supra* note 54, at 454 (judicial view of the college-student relationship evolved into the *in loco parentis* doctrine, whereby colleges assumed the role of their students' parents). See, e.g., *Boyd v. State*, 88 Ala. 169, 7 So. 268 (1889); *Vanvactor v. State*, 113 Ind. 276, 15 N.E. 341 (1888).

58. M.C. SMITH, *supra* note 10, at 5. See also Zirkel & Reichner, *Is the In Loco Parentis Doctrine Dead?*, 15 J.L. & EDUC. 271, 271 (1986) ("In loco parentis literally means 'in the place of a parent.'").

59. Szablewicz & Gibbs, *supra* note 54, at 454.

60. See, e.g., *Gott v. Berea College*, 156 Ky. 376, 161 S.W. 204 (1913).

61. 156 Ky. 376, 161 S.W. 204 (1913).

62. *Id.* at 379-80, 161 S.W. at 206.

63. *Id.* at 379, 161 S.W. at 206 ("[W]hether the rules . . . are wise is a matter left solely to the discretion of the authorities or parents . . . and, in the exercise of that discretion, the courts are not disposed to interfere, unless the rules and aims are unlawful or against public policy.").

64. 118 F.2d 836 (10th Cir. 1941), *cert. denied*, 314 U.S. 638 (1941).

65. *Id.* at 842.

66. See Szablewicz & Gibbs, *supra* note 54, at 455.

67. M.C. SMITH, *supra* note 10, at 5.

If cases imposing liability upon colleges during the *in loco parentis* period are scarce, it is due to the notions of charitable or sovereign immunity, rather than

## B. *The Abandonment of the In Loco Parentis Doctrine*

In the late 1960's and early 1970's, college students asserted their independence and willingly accepted responsibility for their own actions.<sup>68</sup> Students militantly rebelled against parental authority.<sup>69</sup> Accordingly, there remained little logic behind colleges standing in place of students' parents, and college administrations' duty to protect students disappeared.<sup>70</sup>

In response to these changing attitudes, courts rejected colleges' attempts to limit students' rights.<sup>71</sup> *Healy v. James*<sup>72</sup> illustrates this judicial resistance. In accordance with the college's requirements, the students in *Healy* applied for recognition of their organization, but their application was rejected.<sup>73</sup> The United States Supreme Court held that the college had the burden of justifying its refusal to recognize the student organization.<sup>74</sup> The *Healy* decision signalled judicial departure from stringent application of *in loco parentis* in cases involving student rights.<sup>75</sup>

Similarly, in 1979, the court in *Bradshaw v. Rawlings*<sup>76</sup> refused to find that the college had a duty to protect a student who was injured in an automobile accident while commuting from a class picnic.<sup>77</sup> The court reversed a lower court decision in favor of the student and held that: "[T]he modern American college is not an insurer of the safety of its students. Whatever may have been its

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the inapplicability of the doctrine. The *Gott* definition of *in loco parentis* was qualified with an 'unless against public policy' stipulation. Until recently courts felt that damage awards against colleges and universities drained the financial resources of such institutions and that such a drain was against public policy. Thus, the shortage of old cases discussing *in loco parentis* as a basis of liability comes as no surprise. This issue was never reached by most appellate courts because of the preemptory immunity issue.

Szablewicz & Gibbs, *supra* note 54, at 455-56 (citations omitted).

68. Szablewicz & Gibbs, *supra* note 54, at 456.

69. *Id.*

70. *Id.*

71. See generally Case Comment, *Eiseman v. State of New York: The Duty of a College to Protect Its Students from Harm by Other Students Admitted Under Special Programs*, 14 J.C. & U.L. 591, 592 n.13 (1988) ("In a series of cases, the courts made clear that *in loco parentis* was no longer tenable in either private or public institutions of higher education."). See also Zirkel & Reichner, *supra* note 58, at 281; see, e.g., *Dixon v. Alabama State Bd. of Educ.*, 294 F.2d 150 (5th Cir. 1961); *Soglin v. Kaufman*, 295 F. Supp. 978 (W.D. Wis. 1968); *Buttney v. Smiley*, 281 F. Supp. 280 (D. Colo. 1968); *Goldberg v. Regents of Univ. of Cal.*, 248 Cal. App. 2d 867, 57 Cal. Rptr. 463 (1967).

72. 408 U.S. 169 (1972).

73. *Id.* at 172.

74. *Id.* at 184.

75. See *supra* notes 54-67 and accompanying text.

76. 612 F.2d 135 (3d Cir. 1979), *cert. denied*, 446 U.S. 309 (1980).

77. *Id.* at 141.

responsibility in an earlier era, the authoritarian role of today's college administrators has been notably diluted in recent decades."<sup>78</sup> Thus, the *Bradshaw* court expressly recognized the demise of the doctrine of *in loco parentis*.<sup>79</sup>

#### IV. The Present State of College Liability: *In Loco Parentis* Revisited?

The recent judicial approach to college liability for personal injuries to students indicates a limited return to *in loco parentis*.<sup>80</sup> The increasing number of negligence suits instituted by students against universities similarly suggests that students are again looking to colleges as their guardian and protector.<sup>81</sup> Thus, a limited application of *in loco parentis* appears to have been judicially revived; colleges today are increasingly being held to have a duty to protect the physical well-being of students.<sup>82</sup>

For example, in *Mullins v. Pine Manor College*,<sup>83</sup> a student sought to recover damages from a women's college for injuries sustained when she was raped on campus.<sup>84</sup> No incidents of violent crime occurred on the campus in prior years; however, a burglary occurred the year before this particular attack, and a man was reported scaling an outer campus wall the night preceding the rape.<sup>85</sup> The *Mullins* court recognized that, in theory, a college no longer

78. *Id.* at 138.

Society as a whole accepted . . . the new independence of college students. In most places the age of majority was lowered to eighteen. College students could now do most of the things adult members of society could do. Perhaps the greatest reflection of this was the twenty-sixth amendment to the constitution, which lowered the voting age to eighteen. This constitutional change forced the courts to recognize the new independent status of the college student.

Szablewicz & Gibbs, *supra* note 54, at 456 (citations omitted).

79. See Zirkel & Reichner, *supra* note 57, at 282 ("[The *Bradshaw* court] reversed a negligence judgment against a college, concluding that the campus revolutions of the '60s had resulted in a dramatic reversal of the rights/duties derived from the *in loco parentis* doctrine.").

80. Szablewicz & Gibbs, *supra* note 54, at 457. See, e.g., *Jesik v. Maricopa County Community College District*, 125 Ariz. 543, 611 P.2d 547 (1980); *Peterson v. San Francisco Community College District*, 36 Cal. 3d 799, 685 P.2d 1193, 205 Cal. Rptr. 842 (1984); *Mullins v. Pine Manor College*, 389 Mass. 47, 449 N.E.2d 331 (1983); *Miller v. State of New York*, 62 N.Y.2d 506, 467 N.E.2d 493, 478 N.Y.S.2d 829 (1984). See generally M.C. SMITH, *supra* note 10, at 81-84.

81. Szablewicz & Gibbs, *supra* note 54, at 457. See also, M.C. SMITH, *supra* note 10, at 81 ("Crime on campus is subjecting institutions of higher learning and those who run them to a broad new field of civil liability for money damages.").

82. Szablewicz & Gibbs, *supra* note 54, at 465.

83. 389 Mass. 47, 449 N.E.2d 331 (1983).

84. *Id.* at 47, 449 N.E.2d at 333.

85. *Id.* at 50, 449 N.E.2d at 334.

stands *in loco parentis* to its students.<sup>86</sup> Nevertheless, the court declared that the college was "not entitled to abandon any effort to ensure [students'] physical safety" simply because it was no longer required to police its students' morals.<sup>87</sup> The court ultimately held that the risk of rape was foreseeable and, in fact, foreseen.<sup>88</sup> Therefore, the college was held liable for the student's injuries.<sup>89</sup>

In a similar suit, *Miller v. State*,<sup>90</sup> the New York Court of Appeals likened the university's duty to its resident students to a landlord's duty to his tenants.<sup>91</sup> In *Miller*, a state university student was raped in her dormitory room.<sup>92</sup> The court found that the state breached its duty to protect its "tenants" from reasonably foreseeable criminal assaults by failing to lock outer doors in the residence halls.<sup>93</sup> The court considered campus security reports, which indicated that other crimes had occurred in the dormitories, including another rape, and deemed the attack foreseeable.<sup>94</sup>

The principle that a college has a duty to protect its students from reasonably foreseeable assaults on campus was reinforced in *Peterson v. San Francisco Community College District*.<sup>95</sup> In *Peterson*, a student was attacked on a stairway in a school parking lot.<sup>96</sup> The court considered the college's awareness of similar assaults on the same stairway and its failure to warn students in determining that the student could bring suit for her injuries.<sup>97</sup>

The same foreseeability analysis often exculpates colleges when criminal activity is not foreseeable. Parents of two college seniors brought suit in *Reylea v. State*,<sup>98</sup> alleging that the university failed

86. *Id.* at 52, 449 N.E.2d at 335.

87. *Id.* at 52, 449 N.E.2d at 335-36. See also Szablewicz & Gibbs, *supra* note 54, at 458 (noted *Mullins* court's recognition of the continuing vitality of some features of the *in loco parentis* doctrine while acknowledging that the traditional notions of the doctrine are dead).

88. *Mullins v. Pine Manor College*, 389 Mass. 47, 54-55, 449 N.E.2d 331, 337 (1983). The college's vice president for operations testified that "[he] had foreseen the risk that a student at Pine Manor could be attacked and raped on campus." *Id.*

89. *Id.* at 58, 449 N.E.2d at 339.

90. 62 N.Y.2d 506, 467 N.E.2d 493, 478 N.Y.S.2d 829 (1984).

91. *Id.* at 508, 467 N.E.2d at 494, 478 N.Y.S.2d at 830.

92. *Id.* at 506, 467 N.E.2d at 493, 478 N.Y.S.2d at 829.

93. 62 N.Y.2d at 508-09, 467 N.E.2d at 495, 478 N.Y.S.2d at 831; M.C. SMITH, *supra* note 10, at 82 ("[F]ailure to lock dormitory outer doors was a breach of [the university's] duty to maintain minimal security.").

94. *Miller v. State*, 62 N.Y.2d 506, 509-10, 467 N.E.2d 493, 495, 478 N.Y.S.2d 829, 831 (1984).

95. 36 Cal. 3d 799, 685 P.2d 1193, 205 Cal. Rptr. 842 (1984).

96. *Id.* at 799, 685 P.2d at 1195, 205 Cal. Rptr. at 842.

97. *Id.* at 814, 685 P.2d at 1202, 205 Cal. Rptr. at 851. See also Szablewicz & Gibbs, *supra* note 54, at 459 (noting that liability was premised upon the college's duty to provide safe premises through the exercise of due care).

98. 385 So. 2d 1378 (Fla. Dist. Ct. App. 4th Dist. 1980).

to provide adequate security.<sup>99</sup> The students were murdered after leaving a night class in a remote campus building.<sup>100</sup> The court emphasized that no serious crimes had occurred on campus since the school was founded seven years earlier<sup>101</sup> and held that, absent foreseeability, the university's insurer could not be found liable.<sup>102</sup>

Similarly, in *Brown v. North Carolina Wesleyan College*,<sup>103</sup> a college student was abducted from the campus, raped, and murdered.<sup>104</sup> The *Brown* court held that the college could not be found negligent given the college's adequate security procedures and absent repeated criminal activity, which would have imposed a duty on the college to keep its campus safe.<sup>105</sup> The court declared that "foreseeability of a criminal assault . . . determines a college's duty to safeguard its students from criminal acts of third persons."<sup>106</sup>

Foreseeability is the recurring theme in recent decisions dealing with the issue of university liability to student victims of campus crime. In the 1980's a college will be liable if it does not take steps to safeguard its students from foreseeable criminal acts.<sup>107</sup> Accordingly, it appears that the doctrine of *in loco parentis* has been partially revived. The modified *in loco parentis* doctrine is limited to the college's duty to protect students' physical safety but does not extend to control over students' morals.<sup>108</sup>

## V. The Future of University Liability for Campus Crime

There are various theories under which a university may be held liable in a civil action to a student victim of campus crime. An institution's failure to furnish correct statistics reflecting crime on its campus violates the College and University Security Information Act.<sup>109</sup> Violation of the Act itself, without further proof, may be negligence per se.<sup>110</sup> Incorrect crime statistics may also form the ba-

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99. *Id.* at 1380.

100. *Id.*

101. *Id.* at 1383.

102. *Reylea v. State*, 385 So. 2d at 1383 (Fla. Dist. Ct. App. 4th Dist. 1980).

103. 65 N.C. App. 579, 309 S.E.2d 701 (1983).

104. *Id.* at 579, 309 S.E.2d at 701.

105. *Id.* at 583-84, 309 S.E.2d at 703.

106. *Brown v. North Carolina Wesleyan College*, 65 N.C. App. 579, 583, 309 S.E.2d 701, 703 (1983).

107. Annotation, *Liability of University, College or Other School For Failure to Protect Student From Crime*, 1 A.L.R.4th 1099, 1100 (1980). See also M.C. SMITH, *supra* note 10, at 86 ("The foreseeability doctrine has thus become firmly implanted in American college and university law.").

108. Szablewicz & Gibbs, *supra* note 54, at 465.

109. 24 PA. CONS. STAT. ANN. § 2502-3(b) (Purdon Supp. 1989).

110. See *infra* notes 116-22 and accompanying text.

sis of an action against the institution for negligent misrepresentation.<sup>111</sup> Even if accurate information is disclosed as required by the Act, a university may be liable for failure to take reasonable measures to protect its students from foreseeable criminal activity.<sup>112</sup> In defense, a university may argue that a student assumed the risk of campus crime by choosing to attend that institution.<sup>113</sup> The assumption of risk defense is unlikely to be successful, though, considering the purpose of the College and University Security Information Act<sup>114</sup> and today's modified doctrine of *in loco parentis*.<sup>115</sup>

### A. Theories of University Liability in Private Actions

1. *Negligence Per Se as a Basis for University Liability*.—When inaccurate crime statistics are compiled and false reports are distributed to applicants, students, and employees, an institution may be held liable in a private action. The university may be sued in negligence, based on negligence per se.<sup>116</sup>

The doctrine of negligence per se most often applies when the legislature enacts a safety statute that has a sufficiently close application to the facts of the case at bar.<sup>117</sup> The College and University Security Information Act is a safety statute designed to increase and improve on-campus crime prevention.<sup>118</sup> Under the doctrine of negligence per se, an unexcused violation of the Act would constitute negligence in and of itself.<sup>119</sup> Even in the minority of jurisdictions that do not follow the negligence per se doctrine, violation of the Act would serve as some evidence of negligence.<sup>120</sup>

A university that violates the College and University Security Information Act would not be liable under the doctrine of negligence

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111. See *infra* notes 123-34 and accompanying text.

112. See *supra* notes 83-108 and accompanying text.

113. See *infra* notes 138-42 and accompanying text.

114. The College and University Security Information Act is intended to increase awareness of the high incidence of campus crime and improve campus methods of crime prevention. See Vranicar, *supra* note 27, at 2.

115. See *supra* notes 80-108 and accompanying text.

116. See W.P. KEETON, D.B. DOBBS, R.E. KEETON & D.G. OWEN, PROSSER AND KEETON ON TORTS 220-33 (1984) (A statute may be interpreted as fixing a standard from which it is negligent to deviate.).

117. See *id.* at 229-30.

118. Vranicar, *supra* note 27, at 2.

119. See RESTATEMENT (SECOND) OF TORTS § 288B(1) (1965), which provides:

(1) The unexcused violation of a legislative enactment or an administrative regulation which is adopted by the court as defining the standard of conduct of a reasonable man, is negligence in itself.

120. See RESTATEMENT (SECOND) OF TORTS § 288B(2) (1965) ("The unexcused violation of an enactment or regulation which is not so adopted may be relevant evidence bearing on the issue of negligent conduct.").

per se, however, unless a plaintiff could also show that the university's violation caused her injury.<sup>121</sup> Most likely, causation could be established easily. For instance, a student may be a victim of a crime that repeatedly occurred on campus in past years, but was never reported. To establish the necessary causal link between the acts constituting a violation of the Act and her injury, the student need only prove that she attended the college after relying on the misleading security information. In such a situation, it is likely the student could successfully sue the college in negligence, predicated on negligence per se.<sup>122</sup>

2. *Negligent Misrepresentation as a Basis for University Liability.*—A cause of action for negligent misrepresentation<sup>123</sup> may lie against a university that furnishes incorrect security and crime statistics.<sup>124</sup> The institution potentially would be liable to persons for whose benefit it is required to furnish information under the College and University Security Information Act;<sup>125</sup> this class of persons includes employees, applicants, current students, and parents of students. A claim for negligent misrepresentation requires proof that: 1) the institution made a misstatement; 2) the plaintiff justifiably relied on the misstatement; and 3) the plaintiff suffered an injury as a result.<sup>126</sup>

In an action for misrepresentation, the reliance requirement is

121. See W.P. KEETON, D.B. DOBBS, R.E. KEETON & D.G. OWEN, *supra* note 116, at 229-30.

122. The same analysis applies with respect to a private action brought when a university fails to compile any crime statistics or security information. In this situation, however, it would be difficult for a student to prove causation since no reports were furnished upon which reliance could be claimed.

123. See W.P. KEETON, D.B. DOBBS, R.F. KEETON & D.G. OWEN, *supra* note 116, at 745 ("A representation made with an honest belief in its truth may still be negligent, because of lack of reasonable care in ascertaining the facts . . .").

124. See RESTATEMENT (SECOND) OF TORTS § 311 (1965), which provides:  
Negligent Misrepresentation Involving Risk of Physical Harm

(1) One who negligently gives false information to another is subject to liability for physical harm caused by action taken by the other in reasonable reliance upon such information, where such harm results

(a) to the other, or

(b) to such third persons as the actor should expect to be put in peril by the action taken.

(2) Such negligence may consist of failure to exercise reasonable care

(a) in ascertaining the accuracy of the information, or

(b) in the manner in which it is communicated.

125. See RESTATEMENT (SECOND) OF TORTS § 552(3) (1977), which provides:

(3) The liability of one who is under a public duty to give the information extends to loss suffered by any of the class of persons for whose benefit the duty is created, in any of the transactions in which it is intended to protect them.

126. *Id.* at § 552.

of paramount importance. For example, a student who was assaulted and raped in her dormitory room brought suit in *Cutler v. Board of Regents of State of Florida*,<sup>127</sup> alleging that the institution misrepresented that the dormitory was safe and that the student did not need to employ extraordinary measures to ensure her safety.<sup>128</sup> The court held that the student failed to state a cause of action because she failed to allege reliance; however, she was permitted to amend her complaint to include, if possible, the necessary allegation of reliance.<sup>129</sup>

Similarly, the court in *Duarte v. State*<sup>130</sup> recognized that a university may be sued for misrepresentation.<sup>131</sup> In *Duarte*, parents sought damages after their daughter was raped and murdered in a student dormitory.<sup>132</sup> The parents alleged that the safety of the university was negligently misrepresented and that they relied by placing their daughter in a student residence hall rather than in private housing.<sup>133</sup>

Thus, an institution that negligently compiles inaccurate security and crime statistics in an effort to comply with the College and University Security Information Act may be liable for negligent misrepresentation.<sup>134</sup> To recover, a student need only show that the institution misrepresented the relevant crime statistics, that the student relied on the statistics when choosing to attend that institution, and that the student was subsequently injured when victimized by campus crime.

3. *Breach of Duty to Protect Students From Foreseeable Criminal Activity on Campus as a Basis for University Liability.*—In an action brought against a university for failure to safeguard its students from crime on campus, it is probable that correct crime statistics will play a major role in determining the liability of the university. The trend of the 1980's suggests that a college will be held liable if it does not take reasonable steps to protect its students from foreseeable criminal activity.<sup>135</sup> The statistics regarding on-

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127. 459 So. 2d 413 (Fla. Dist. Ct. App. 1st Dist. 1984).

128. 459 So. 2d at 415.

129. *Id.*

130. *Duarte v. State*, No. 16005 (Cal. Ct. App. 4th Dist. Jan. 18, 1979) (LEXIS, States library, Cal. file). By order of the California Supreme Court, this decision will not be published. 88 Cal. App. 3d 473, 151 Cal. Rptr. 727 (1979).

131. *Id.* at 23.

132. *Id.* at 3.

133. *Id.* at 4.

134. See *supra* notes 123-33 and accompanying text.

135. Annotation, *supra* note 107, at 1100. See also M.C. SMITH, *supra* note 10, at 86.



campus crime for the most recent three-year period<sup>136</sup> are logical indicators of foreseeable criminal conduct. If a particular crime was reported at least once in the three years prior to the incident in question, it is likely that the court will deem the incident foreseeable.<sup>137</sup>

Thus, the statistics mandated by the Act will afford courts the opportunity to apply a bright-line test of foreseeability. Reference to on-campus crime figures for the most recent three-year period may set the parameters for determining exactly what criminal activity was foreseeable for purposes of determining university liability.

### *B. Assumption of Risk: A Defense Against University Liability*

In light of apparent judicial willingness to hold an institution liable if the criminal activity was foreseeable,<sup>138</sup> disclosure of criminal activity on campus for the most recent three-year period may require the institution to take reasonable steps to prevent any crime occurring during that period, regardless of frequency. Thus, the College and University Security and Information Act provides for liability of institutions of higher education in private actions. By virtue of the same disclosure, however, the student and the institution have equal knowledge of on-campus criminal activity. Consequently, the Act may operate to shield the institution from liability under the doctrine of assumption of risk.<sup>139</sup>

For a person to assume the risk of injury he must knowingly<sup>140</sup> and voluntarily<sup>141</sup> expose himself to a dangerous situation. A student who acquires a university's report, furnished in compliance with the College and University Security Information Act, is aware of the institution's security policies and the incidence of campus crime.

136. 24 PA. CONS. STAT. ANN. § 2502-3(b) (Purdon Supp. 1989).

137. The College and University Security Information Act directs the compilation of campus crime statistics for the most recent three-year period. See 24 PA. CONS. STAT. ANN. § 2502-3(b) (Purdon Supp. 1989). In hindsight, any crime reported would probably be deemed foreseeable.

138. See *supra* notes 80-108 and accompanying text.

139. See RESTATEMENT (SECOND) OF TORTS § 496C (1965), which provides:

(1) Except as stated in Subsection (2), a plaintiff who fully understands a risk of harm to himself or his things caused by the defendant's conduct or by the condition of the defendant's land or chattels, and who nevertheless voluntarily chooses to enter or remain, or to permit his things to enter or remain within the area of that risk, under circumstances that manifest his willingness to accept it, is not entitled to recover for harm within that risk.

(2) The rule stated in Subsection (1) does not apply in any situation in which an express agreement to accept the risk would be invalid as contrary to public policy.

140. See W.P. KEETON, D.B. DOBBS, R.E. KEETON, & D.G. OWEN, *supra* note 116, at 487.

141. See *id.* at 487, 490.

Moreover, if the student chooses to attend that particular college despite the occurrence of crime in the past three years, the student has voluntarily assumed a known risk. Thus, if the student is a victim of a type of crime that was reported in the university's statistics, the university may circumvent liability by arguing that the student assumed the risk of falling victim to criminal activity on campus.

Although the elements of assumption of risk may be satisfied in a suit against a university that complies with the Act,<sup>142</sup> numerous policy reasons indicate the unlikelihood that a court will absolve an institution on the basis of a student's assumption of the risk of on-campus crime. First, it is doubtful that any campus remains crime-free for a consecutive three-year period. Therefore, the necessity of obtaining an education results in a student attending a university faced with on-campus crime.<sup>143</sup> Also, the trend in the 1980's indicates that colleges once again have a duty to physically protect students.<sup>144</sup> Finally, the goal of the College and University Security Information Act is to increase awareness of on-campus criminal conduct and improve security procedures so as to decrease the incidence of violent crime on campus.<sup>145</sup> Since the Act is intended to benefit and safeguard college students, a finding that a student assumed the risk of harm would defeat the purpose of the College and University Security Information Act.

In light of these policy considerations, it is unlikely that a court would find that a student who was aware of the crime rate at a particular institution when he chose to enroll had assumed the risk of becoming a crime victim. Due to the disclosure requirements of the Act, however, the elements of assumption of risk may be satisfied. For this reason, a student should be prepared to counter such an argument in a suit against an institution.

## VI. Critique of the Pennsylvania College and University Security Act

Legislation similar to Pennsylvania's College and University Security Information Act is pending in many states.<sup>146</sup> The inadequa-

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142. See *supra* notes 139-41 and accompanying text.

143. See RESTATEMENT (SECOND) OF TORTS § 496E(2)(b) (1965) (Acceptance of risk is not voluntary if the tortious conduct has left no reasonable course of conduct in order to "exercise or protect a right or privilege of which the defendant has no right to deprive him.").

144. See *supra* notes 80-108 and accompanying text.

145. Vranicar, *supra* note 27, at 2.

146. Collins, *supra* note 2, at B4, col. 2-3 (The College and University Security Information Act "has spawned similar legislation which is pending in 21 other states.").

cies of the Pennsylvania Act should be considered when drafting proposed legislation.

First, the statistics required by the Act do not relay the severity of a reported incident<sup>147</sup> and, therefore, may be misleading. For example, thefts of both automobiles and stamps are included in the same figures reporting the incidence of theft on campus.<sup>148</sup> A related problem is that some criminal incidents may be counted twice.<sup>149</sup> For instance, theft is the taking of property without the owner's consent.<sup>150</sup> If a person enters a building or occupied structure, intending to commit a crime therein, he has committed a burglary.<sup>151</sup> If property is taken during the course of the burglary, a theft has also been committed. Therefore, one incident would be statistically represented under two categories, burglary and theft.<sup>152</sup>

Another shortcoming of the College and University Security Information Act is that the public's understanding of crimes may not coincide with the legal definitions.<sup>153</sup> A Pennsylvania university reported an incident as an aggravated assault,<sup>154</sup> which is legally defined as an attempt to cause serious bodily injury.<sup>155</sup> Typically, the term aggravated assault connotes attempted rape or murder.<sup>156</sup> This particular incident, however, involved a scuffle between boyscouts attending a convention on the campus.<sup>157</sup> Obviously, this incident does not comport with the public perception of an aggravated assault.

In addition, the College and University Security Information Act mandates the reporting of on-campus statistics but does not require the disclosure of the surrounding community's crime statistics.<sup>158</sup> This factor may adversely affect institutions located in urban areas; crime rates at city schools may be relatively higher than those of non-urban colleges, but lower than the crime rates in the environment bordering its campus.

Finally, Pennsylvania school officials have expressed concern about the use of crime statistics as criteria for comparison of col-

147. Fisher, *supra* note 5, at 22.

148. *Id.*

149. *Id.*

150. See W.R. LAFAYE, A.W. SCOTT, JR., CRIMINAL LAW 756-62 (1986).

151. *Id.* at 792.

152. Fisher, *supra* note 5, at 22.

153. *Id.*

154. *Id.*

155. See W.R. LAFAYE, A.W. SCOTT, JR., *supra* note 150, at 691-96.

156. See Fisher, *supra* note 5, at 22.

157. *Id.*

158. Collins, *supra* note 2, at B4, col. 1.

leges.<sup>159</sup> College officials fear a decline in enrollment in Pennsylvania institutions as a result of the disclosure requirements of the College and University Security Information Act.<sup>160</sup> The concern will be less significant in the next few years, however, as more states adopt similar legislation.

## VII. Conclusion

The practice of holding colleges and universities liable for the safety of students began in the 19th century and was based upon the doctrine of *in loco parentis*. Initially, institutions were liable for students' moral and physical well-being. With the changing attitudes of the 1960's and 1970's, however, courts generally declined to find colleges and universities liable under the *in loco parentis* doctrine. In the 1980's, the doctrine has been partially revived, as institutions experienced a significant increase in the incidence of violent campus crime. Presently, an institution may be held liable for the physical safety of a student who is victimized on campus by a foreseeable criminal act.

Pennsylvania enacted the College and University Security Information Act in response to the increase of violent crime on campuses. The Act requires a college or university to report campus criminal activity to the police. In addition, a report on campus crime statistics and the institution's policies and procedures regarding campus security must be provided to current students and employees, and upon request, to applicants and new employees. The Act, however, contains some inadequacies. Most of the shortcomings of the Act cannot be avoided, and certain problems ensue when generalizations are made based on statistics. The expected benefits of the Act, including increased awareness and improved methods of handling crime on campus, however, should significantly outweigh its shortcomings. The Act also provides a model for other states to consider when drafting their own legislation.

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159. *Id.* at B4, col. 1.

160. *Id.* at B4, col. 2.

